

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219413; B-219413.2 **DATE:** July 11, 1985
MATTER OF: Brink Construction Co.

DIGEST:

1. Protest alleging that the protester was not accorded adequate time to prepare its bid is untimely because the bid opening date was set forth in the solicitation and the protest was not filed prior to bid opening.
2. Protest challenging the propriety of an agency's decision to reject all bids as unreasonably high (including the protester's low bid) and to cancel a solicitation is untimely and not for consideration on the merits where it was filed with GAO more than 10 days after the protester knew of the cancellation and the reason for cancellation.
3. Where protest against cancellation of original sollicitaiton is filed untimely, award of a contract under resolicitation at a price higher than the protester's low bid under the original solicitation does not create a new basis for protesting against the cancellation of the original solicitation, because the results of the resolicitation have no bearing on the propriety of the cancellation.

Brink Construction Company (Brink) protests the cancellation of invitation for bids (IFB) No. DACW45-85-B-0053 issued by the United States Army Corps of Engineers, Omaha District (Army), for the rehabilitation of bussing and cables at the Fort Peck dam and lake, Montana, and the award of a contract to L.E.D. Electric Inc., under IFB No. DACW45-85-B-0077, the resolicitation of the requirement.

We dismiss the protest as untimely.

Brink contends that since the Army's letter to Brink which notified it that the original solicitation was

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canceled because the prices of the two bids received unreasonably exceeded the government estimate, was dated May 30, 1985 (and apparently received several days after May 30), and the resolicitation bid opening date was June 7, 1985, Brink had an inadequate amount of time to rebid. Brink also argues that the Army lacked a compelling reason to reject as unreasonably priced all bids under the original IFB and cancel the IFB.

Concerning the Army's alleged failure to provide adequate time within which to prepare bids on the resolicitation, we point out that the bid opening date of June 7, 1985, was set forth in the IFB. Brink's protest on this basis is untimely under our Bid Protest Regulations which require that protests concerning alleged solicitation defects (such as this) that are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2 (a)(1) (1985); McGraw-Edison Co. and ASEA Electric, Inc., B-217311; B-217311.2, Jan. 23, 1985, 85-1 C.P.D. ¶ 93.

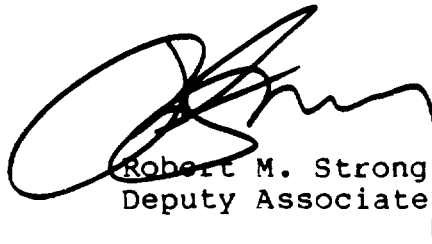
Brink's contention that the Army lacked a compelling reason to reject all bids and cancel the original IFB, is also untimely raised and not for our consideration. Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation must be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1985). Although Brink's protest does not indicate the exact date on which Brink received the Army's May 30, 1985, letter stating the Army's detailed reason for canceling the original IFB, Brink's protest indicates that the letter was received before the due date of June 7, 1985, for bids under the resolicitation. Therefore, Brink's protest, filed on June 27, 1985, more than 10 working days after it knew that the original IFB was canceled because the prices bid unreasonably exceeded the government estimate, is untimely. Tamaqua Cable Products Corporation, B-209551, Nov. 1, 1982, 82-2 C.P.D. ¶ 398, Art's Supplies & Services, B-206885, May 3, 1982, 82-1 C.P.D. ¶ 413.

Finally, to the extent Brink is alleging that the resolicitation, which resulted in higher prices than bids received under the canceled IFB, shows the agency improperly canceled the original IFB, this allegation does not alter our conclusion that Brink's protest is untimely. This is so because we have held that the results of the resolicitation have no bearing on the propriety of the cancellation of the initial solicitation. Warfield & Sanford, Inc., B-206784, June 23, 1982, 82-1 C.P.D. ¶ 620; Custom Marine, Inc.,

B-198082, July 3, 1980, 80-2 C.P.D. ¶ 9. Therefore, if Brink believed that it should have received an award based on its low bid under the original solicitation, it was required to protest within 10 days after learning that the solicitation had been canceled and the reason it was canceled, rather than waiting until after award was made under the resolicitation. Tamaqua Cable Products Corporation, B-209551, supra.

The protester has requested reimbursement of its costs of filing and pursuing this protest (including attorney's fees) and bid preparation costs. However, a claim for such costs which is submitted in connection with an untimely protest will not be considered by this Office. Blumfeldt Engineering Co., B-217529, Jan. 25, 1985, 85-1 C.P.D. ¶ 103.

The Protest is dismissed.

A handwritten signature in black ink, appearing to read 'Robert M. Strong', is written over a horizontal line.

Robert M. Strong
Deputy Associate General Counsel